

BEFORE THE
SHORELINES HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF A SUBSTANTIAL
DEVELOPMENT PERMIT ISSUED TO
PAUL McCONKEY, d.b.a. PARK PLACE
APARTMENTS, BY THE CITY OF BREMERTON

EDNA EASTWOOD, DEPARTMENT OF
ECOLOGY and ATTORNEY GENERAL

Appellants,

v.

CITY OF BREMERTON and PAUL
McCONKEY, d.b.a. PARK PLACE
APARTMENTS,

Respondents.

SHB Nos. 77-31 and 77-32

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

This matter, the request for review of a substantial development permit issued to Park Place Apartments and Paul McConkey by the City of Bremerton, came before the Shorelines Hearings Board, Dave J. Mooney, Chairman, Chris Smith, Robert F. Hintz, and Robert E. Beaty, at a hearing on May 10, 1978 in Lacey.

Appellants Department of Ecology and Attorney General were

1 represented by Robert E. Mack, Assistant Attorney General; respondent
2 City of Bremerton appeared through Karen Conoley, Assistant City
3 Attorney; respondent permittee appeared pro se. Appellant Edna
4 Eastwood, having reach an agreement with respondent herein, did
5 not appear.

6 Having heard the testimony, having examined the exhibits, and
7 having considered the contentions of the parties, the Shorelines
8 Hearings Board makes these

9 FINDINGS OF FACT

10 I

11 The proposed substantial development is the construction of
12 a 56-unit apartment complex and an adjoining boat moorage for
13 forty boats, and includes 113 parking stalls, five of which are for
14 general public use. The project covers approximately two acres of
15 upland and one acre of shoreland on a site located along the
16 shoreline between Elizabeth and Park Avenues in Bremerton. A
17 ninety-foot strip of land along the shoreline lies within the
18 inner and outer harbor lines and which apparently will be leased to the
19 permittee by the State Department of Natural Resources.

20 II

21 The existing upland area, formerly a concrete plant, is
22 generally flat and spotted with concrete rubble. A pile pier fronts
23 the eastern two-thirds of the shoreline. The remaining one-third of
24 the shoreline is covered by a concrete and rubble bank. On the
25 Elizabeth Avenue side of the property, the shoreline curves inland
26 then seaward, and rises abruptly about thirty feet. There is no

27 FINAL FINDINGS OF FACT,
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1 present feasible access from the end of Elizabeth Avenue to the
2 permittee's property along the shoreline. Any useful access must
3 be constructed. The public now gains access to the shoreline by
4 way of Park Avenue.

5 The site falls partially within residential-two (R-2) and
6 commercial zones. The city's comprehensive plan designates the
7 site for high density residential use, green belt and park land.
8 The neighborhood plan indicates the site as a green belt area backed
9 by high density residential use. The proposed development conforms
10 with the applicable plans and zoning designation.

11 III

12 The City of Bremerton's Draft Shoreline Master Program was
13 ascertainable at the time of permit issuance and it is embodied
14 in Exhibit A-12.

15 The draft shoreline master program places the entire project
16 site in an "urban residential" designation. The proposed substantial
17 development is consistent with the permitted uses in an urban
18 residential designation. The moorage facility is located within
19 shorelines of state-wide significance.

20 IV

21 The instant development would enhance an otherwise ravaged
22 area. The improvement, which will cost about one million dollars,
23 would improve the surrounding neighborhood, which is residential in
24 character, and provide needed moorages for boats.

25 V

In the design of the proposed development, permittee sought

27 FINAL FINDINGS OF FACT,
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1 input from many federal, state and local agencies. The density
2 of the project was kept lower than other comparable developments;
3 view blockage was minimized; open space and public access to
4 the shoreline was provided.

5 VI

6 Any Conclusion of Law which is deemed a Finding of Fact is
7 hereby adopted as such.

8 From these Findings the Board comes to these

9 CONCLUSIONS OF LAW

10 I

11 The only issue submitted to the Board deals with the provision
12 for public access to the shoreline. The permit provision dealing
13 with such matter is not specific:

14 . . .
15 5. Some method of ensuring public access to the
16 leased publicly owned harbor area should be
accomplished. A covenant or easement are
suggested as a condition of approval.
17

18 The permittee testified that he would allow public access
19 over the leased property along the shoreline to the moorage area
20 and upon a boardwalk which runs along two-thirds of the linear
21 shoreline. Appellants contend that permittee should be presently
22 required to give full linear public access along the shoreline between
23 Elizabeth and Park Avenues as a condition of his permit even though
24 there are no plans for improvement of such access by the permittee
25 or city. For liability and/or security reasons, the permittee does
26 not want to grant, and the city does not want to receive, access

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1 over the undeveloped area. Respondent permittee states that he
2 is willing to provide full linear access along the shoreline when
3 the city could actually use it, i.e., when some access from the end
4 of Elizabeth Avenue to the instant property was constructed. Thus,
5 the only issue separating the parties, and the issue submitted to this
6 Board, is when the permittee should provide public access over the
7 remaining one-third of the linear shoreline.

8 II

9 We believe that the condition for access proposed by the
10 permittee is reasonable. However, such access should be predicated
11 upon a request for it from the city. Access over the final one-third
12 of the shoreline to Elizabeth Avenue would be difficult, and perhaps
13 dangerous, without further construction. Public access to the
14 shoreline would be provided in the proposed project and there
15 appears to be no compelling circumstances to require more access over
16 an inaccessible area prior to the construction of the proposed development.
17 Further, the permittee should be allowed to maintain reasonable
18 control over the boardwalk fronting the apartment area for purposes
19 of security.

20 Accordingly, we remand this matter to the city to develop
21 a condition satisfactory to all parties, or which is not inconsistent
22 with this decision, and to substitute such condition for condition number
23 five of the permit.

24 III

25 Any Finding of Fact which should be deemed a Conclusion of
26 Law is hereby adopted as such.

27 FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

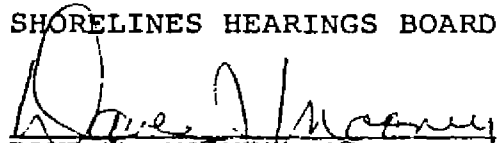
1 From these Conclusions the Board enters this


2 ORDER

3 The matter is remanded to the City of Bremerton to formulate
4 a permit condition in accordance with Conclusion of Law II and
5 to file the language of such condition with this Board for informational
6 purposes within twenty days after its receipt of this Order.

7 DONE this 24th day of May, 1978.

8 SHORELINES HEARINGS BOARD

9 
10 DAVE J. MOONEY, Chairman

11 
12 CHRIS SMITH, Member

13 
14 ROBERT F. HINTZ, Member

15 
16 ROBERT E. BEATY, Member